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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Klaus-Dieter Nehren, et al.
Serial No. : 10/055,658
Filed : January 23, 2002
For : APPARATUS FOR EMPTYING A HOSE BAG
Art Unit : 3754
Examiner : Joseph A. Kaufman

August 29, 2005

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Certain issues presented in the EXAMINER'S ANSWER require brief reply.

King's container & ears

The issue in determining whether Appellants' claims are obvious over the disclosure of the references is not whether or not Appellants' claims exclude King's container and ears, but whether King's container and ears reasonably suggest the

device defined by Appellants' claims.

Appellants' claims require a cap-like mating part fixed on one end of a hose bag. The term "fixed" will be read by those skilled in the art, as well as those unskilled in the art, as meaning that the cap-like mating part is actually attached to the hose bag. Appellants' drawings (Fig. 1, Fig. 2) and discussion of the drawings shows, for example, a cap-like mating part which is adhesively attached to the hose bag (page 3, line 24). By contrast and as best illustrated in King's Fig. 11 and described in detail at col. 6, lines 36 et seq, King has a container 95 into which is inserted a pouch 106. Container 95 has a rim 96 and a lid 97 having side skirts 99. The lid is latched to the rim of the container via latching piece 102 and transverse lip 100. The pouch must have ears 110 and 111 (col. 6, line 58), which are stretched over the rim 96 of container 95. When the lid 97 is brought down onto the rim 96 and latched in place, lid 97 firmly grips ears 110 and 111 and traps them between rim 96, skirts 99 and lid 97. Thus the top 112 of pouch 106 is held taught between ears 110 and 111 (col. 6, lines 60-65).

Clearly, there is a very big difference between a lid which compresses a part of a bag against a rim to "grip" it as recited in King, and a mating part which is fixed to one end of a hose bag.

No person skilled in the art would ever view King's lid & rim "grip" as suggesting anything like Appellants' fixed-to-the-bag mating part.

MOREL'S BLADE: DIFFERENT FUNCTION

The Examiner contends that the requirement for modification requires reasonable motivation to make the combination and not a test for a change in functionality. The Examiner puts the cart before the horse, however. If the proposed modification would change the functionality of the device disclosed in the primary reference so as to destroy the inventive concept of the primary reference, there would be no motivation to make the change. If the device of the primary reference would no longer be able to function in the intended way for the intended purpose, there would be no motivation to make the proposed change.

Here, King needs the specific corkscrew tip 69 (Fig. 6) to pierce the film of the pouch and, by twisting, snag the film and draw it into tapered portion 99 (col. 5, lines 24-29). Further action of drawing the nozzle away from the pouch causes the film to be trapped between threads 70 and 75, to form a mechanical seal (col 5, lines 36-43).

This function would be absolutely destroyed were King's blade to be replaced by Morel's, and therefore no person skilled in the art would ever consider making this change. The Examiner contends that the motivation would be to save time and effort in opening the bag (see office action of 11/04/2004, first four lines of page 3). No person skilled in the art would ever destroy the function of the King device to save time and effort...the device would not work...the required seal would not be achieved...no real purpose would be achieved. No possible motivation exists for making the proposed

change.

The Examiner contends that Morel's blade "prevents membrane parts from falling into the container", and refers to col. 1, lines 35-38 of the Morel reference. This, however, has nothing to do with the end result achieved by King. The King device, by drawing the membrane into the nozzle, and nipping it between threads 70, 75 and bore 68, forms a mechanical seal to prevent material from leaking from the pouch (col. 5, lines 40-44). Thus, a desire, perceived by the Examiner, to prevent membrane parts from falling into the container, would not provide any motivation to replace King's blade with Morel's.

KING'S TIP

The Examiner essentially contends that the fact that King's corkscrew tip has a point and Morel's cutting blade does not have a tip is irrelevant, because Appellants' claims do not recite a tip. The Examiner misses the point. The point is raised to show further reasons why there would be no motivation to substitute Morel's cutting blade for King's corkscrew tip. In order to perform the inventive concept, King needs his point. Morel does not have such a point. Taking away King's corkscrew tip and substituting Morel's would therefore render King's device useless for its intended purpose, and would destroy King's inventive concept.

This is the antithesis of motivation.

No person skilled in the art would ever replace King's corkscrew tip with Morel's blade and, even if they did, it is plain that Appellants' device would not be arrived at.

The rejection of claims 1-6 under 35 U.S.C. 103(a) as obvious over King et al. (U.S. 5,429,273) in view of DE 38 73 178 to Morel (equivalent to U.S. 4,898,293) is clearly in error and should be **REVERSED**.

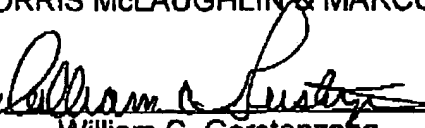
FEE

It is believed that no fee is due for this Reply Brief, but should the Commissioner determine that a fee is due, please charge the required fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess to our Deposit Account No. 14-1263.

Respectfully submitted,
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I hereby certify that this correspondence is being transmitted via facsimile, no. 571-273-8300 to the United States Patent and Trademark Office, addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 29, 2005.

By 
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